IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2308 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SPEICAL LAQ OFFICER - Appellant(s)
Versus
PATEL BHOLIDAS BECHARDAS & 1 - Defendant(s)

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Appearance :
MR SS PATEL, AGP for Appellant
MR AJ PATEL for Respondent: 1
None for Respondent : 2

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 31/07/2006

ORAL JUDGMENT (Per:HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of Notice on behalf of the respondent No.1. Mr.S.S.Patel, learned Assistant Government Pleader for the appellant, states at the Bar that the interest of the appellant and that of the respondent No.2 is similar and is not in conflict at all. In view of this statement and under the circumstances, this Court is of the opinion that it is not necessary for the appellant to effect service of Notice of admission of this appeal upon the respondent No.2. Having regard to the facts of the case, the appeal is taken up for final disposal today.

2. The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908. By way of

this appeal, the appellant has challenged the legality of the judgment and award dated October 11, 2004, rendered by the learned Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura in Land Acquisition Case No.662 of 1998, by which, additional compensation at the rate of Rs.90/- per sq.mt. has been awarded by the Reference Court to the respondent No.1 over and above the compensation at the rate of Rs.3.20/- per sq.mt. awarded to him by the Special Land Acquisition Officer.

3. A proposal was received by the State Government from the Executive Engineer, Narmada Project, Division No.13, Gandhinagar, for the acquisition of lands bearing Survey / Block Nos.124/2, 141, 146/1/1 and 146/1/2 admeasuring 16 sq.mt., 13376 sq.mt., 182 sq.mt., 3505 sq.mt. and 4755 sq.mt. respectively, belonging to the respondent No.1, situated at village Zundal, Taluka and District: Gandhinagar, for the public purpose

of construction of Narmada canal. On perusal of the said proposal, the State Government was satisfied that the land comprising the abovementioned survey numbers of village Zundal was likely to be needed for the public purpose mentioned in the proposal. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the official gazette on February 13, 1991. The respondent No.1 was thereafter served with notice as required under Section 4 of the Act. His objections to the proposed acquisition were considered and thereafter, a report, as contemplated by Section 5A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. Having considered the report, the State Government was satisfied that the land of the respondent No.1 was needed for the public purpose of construction of Narmada canal. Therefore, a declaration under Section 6 of the Act was issued, which was published in the official gazette on August 27, 1991. The

respondent No.1 was thereafter served with notice for determination of compensation payable to him for his acquired lands. He appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. for his acquired lands. However, after considering the materials placed before him, the Special Land Acquisition Officer, by his award dated September 9, 1992, in LAQ Case No.28 of 1991, awarded compensation at the rate of Rs.3.20 ps. per sq.mt. to the respondent No.1. Being aggrieved by the amount of compensation offered by the Special Land Acquisition Officer which, according to the respondent No.1, was highly inadequate, an application in writing requiring the Special Land Acquisition Officer to refer his case to the Court for the purpose of determination of just amount of compensation payable, was submitted by the respondent No.1. In this background, Reference under Section 18 of the Act was made to the District Court, Ahmedabad

(R) at Navrangpura, which was registered as Land Acquisition Case No.662 of 1998.

4. On behalf of the claimant, Amratbhai Babaldas Patel, the Power of Attorney Holder of claimant – Patel Bholidas Bechardas, deposed and his deposition is at Ex.19. On behalf of respondent No.2, one Mr.Mahendrakumar Vashrambhai Patel was examined and his deposition is at Ex.29. The claimant produced documentary evidence, including a copy of the judgment rendered in Land Acquisition Reference No.402 of 1991 pertaining to lands acquired from this very village, i.e. village Zundal, which is exhibited at Ex.16. Further, a copy of the judgment of the High Court in First Appeal No.3189 of 2000 was also produced at Ex.17, by which, the Appeal filed against Land Acquisition Reference No.402 of 1991 was dismissed. Further, the claimant produced a copy of the judgment of the High Court in First Appeal No.3243 of 2000 at Exh.18. The claimant's witness deposed that

the previously acquired lands were adjoining to the lands which are the subject matter of the present acquisition.

5. The appellant and the acquiring body also produced documentary evidence, namely, copies of Village Form No.7/12 of Survey No.113 vide Ex.23 to 26, copy of the map of village Zundal at Ex.27 and a combined map of village at Ex.28.

6. After having considered the oral and documentary evidence adduced by the parties and their rival submissions, the Reference Court relied upon the previous judgment and award pertaining to lands of village Zundal rendered in Land Acquisition Reference No.402 of 1991 which is at Ex.16, as confirmed by the judgment of the High court by Ex.17, as also another judgment of the High Court at Ex.18 as the same furnished good guidance for determining market value of the lands acquired in this case. In the

previous award which is at Ex.16, the Notification under Section 4(1) of the Act was published in the official gazette on December 3, 1985 whereas in the present case, the said Notification was published on February 13, 1991. The learned Judge took into consideration the fact that the previous award pertained to the lands of this very village which were acquired for the same public purpose, while passing the impugned judgment and award. The time gap between the Notifications issued under Section 4(1) of the Act in the previous award and that relating to the present acquisition is about five years and two months. Therefore, the learned Judge came to the conclusion that the claimant in the present case is entitled to escalation in price for his acquired land at the rate of 10% per year. On this basis, the Reference Court has held that the claimant is entitled to get compensation at the rate of Rs.90/- per sq.mt. over and above the compensation already awarded to him by the

Land Acquisition Officer, giving rise to the present appeal.

7. This Court has heard Mr.S.S.Patel, learned AGP for the appellant and Mr.A.J.Patel, learned counsel appearing for the respondent No.1 and has gone through the material on record including the copies of the depositions and exhibits relied upon by the parties.

8. Although Mr.Amratbhai Babaldas Patel, who is the Power of Attorney Holder of claimant Patel Bholidas Bechardas, has deposed vide Ex.19 to the effect that the acquired land is fertile and has adequate irrigation facilities by way of wells and bore-wells, and that the claimant was taking two to three different crops a year and earning a net agricultural income of approximately Rs.15,000/- per Vigha per year, the enhanced compensation has not been claimed on yield basis and neither any documentary evidence

pertaining to the sale of agricultural produce has been adduced. The witness has further stated that village Zundal is situated on Ahmedabad-Kalol highway adjoining to village Chandkheda and there are several residential societies between Chandkheda and Zundal as well as petrol pump, show room of Maruti Cars, Balvinder Auto, Swaminarayan Gurukul, as well as other show-rooms and societies, meaning thereby that village Zundal was sufficiently developed and had potential for further development. It is further stated on behalf of the claimant that prior to the present acquisition, the lands of the same village, i.e. Zundal, were acquired for the purpose of construction of Narmada Canal and the claimants therein had sought References before the Reference court which were numbered as Land Acquisition Reference Nos.325 of 1991 and 402 of 1991. The copy of previous award was produced by him at Ex.16. According to him, the judgment and award rendered in the aforesaid

References was challenged in appeal by the opponents before the High Court and the appeal has been dismissed, thereby confirming the judgment and award of the Reference Court. This witness was cross-examined by the acquiring body as well as the opponent No.1, i.e. the present appellant but nothing fruitful could be elicited from him over and above what was stated in his deposition.

9. It is relevant to notice that the claimant has relied upon Ex.16 which is a copy of the judgment in LAR No.402/91 pertaining to the previously acquired land of village Zundal. The purpose of acquisition of land in that case was similar to the public purpose for which the land has been acquired in the present case. In LAR No.402/91, the Notification under Section 4(1) of the Act was published in the official gazette on 3.12.1985. After considering the evidence on record, the Reference Court had awarded a sum of Rs.60/- per sq.mt. as additional

compensation for the acquired lands over and above the compensation awarded to the claimants by the Land Acquisition officer at the rate of Rs.2.50 ps. per sq.mt. As stated above, the judgment and award in Land Acquisition Reference No.402 of 1991 was further carried in appeal to the High Court in First Appeal No.3189 of 2000, which was dismissed. The judgment of the High Court dated November 29, 2000, is at Ex.17. A perusal of the impugned judgment makes it very clear that the Reference court has placed reliance upon the judgment in Land Acquisition Reference No.402 of 1991, as confirmed by the High Court in First Appeal No.3189 of 2000, which pertains to lands acquired from village Zundal itself. As already referred to earlier, the time gap between the two Notifications under Section 4(1) of the Act, i.e. between the previous award and the present acquisition is approximately five years and two months. Relying upon the previous award, the

Reference Court has held that the claimant is also entitled to rise in price of land at the rate of 10% per year and has therefore come to the conclusion that the claimant is entitled to compensation at the rate of Rs.90/- per sq.mt. for the acquired land over and above the compensation already awarded by the Special Land Acquisition Officer.

10. It is a settled proposition of law that the previous judgment and award of the Reference Court pertaining to the lands of the same village, which has attained finality, is a good piece of evidence on which reliance can be placed while determining the just amount of compensation payable for similar lands acquired subsequently from the same village. We find no reason to interfere with the judgment and award rendered by the Reference Court in the present case, especially when it has been deposed that the previously acquired lands and those presently acquired are adjoining to each other and were similar in

nature. There is nothing on record or in the evidence to the contrary. Therefore, the previous judgment and award of village Zundal has rightly been relied upon by the Reference Court, while awarding additional compensation at the rate of Rs.90/- per sq.mt. in the present case.

11. The learned counsel for the respondent No.1 has submitted before this Court that if the price increase at the rate of 10% is calculated, the claimants would be entitled to compensation at the rate of Rs.93.75 ps. and not Rs.93.20 ps per sq.mt. as awarded by the Reference Court. This Court finds that no appeal has been filed by the claimant against the impugned judgment and award and there is no prayer to this effect. Therefore, this submission cannot be accepted. In our opinion, the reliance placed by the Reference Court on the previous judgment and award relating to lands of village Zundal which has now attained finality does not suffer from

any infirmity and is therefore confirmed.

12. For the foregoing reasons, the appeal is dismissed. It is held that the impugned judgment and award does not require to be interfered with in any manner and the claimant is entitled to total compensation at the rate of Rs.93.20 ps. as held by the Reference Court. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment at the earliest.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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